## PART 2 INDEPENDENT GROUPS

### Chapter 9: Overview and Legal Analysis

## FINDINGS

**(1) Independent groups, including tax-exempt organizations, corporations and unions, spent large sums of money to influence the public's perception of federal candidates and campaigns and the outcome of certain elections in 1996.**

**(2) During the 1996 election cycle, tax-exempt organizations spent tens of millions of dollars on behalf of Republican and Democratic candidates under the guise of issue advocacy, in violation of the spirit and possibly the letter of the tax code and election laws.** Despite their election-related activity, none of these organizations registered with or disclosed their activities to the FEC. Moreover, because of restrictions in the tax code with respect to such tax-exempt organizations, these organizations may have violated their tax status.

**(3) Although many groups conduct activities that influence the public's perception of federal candidates and campaigns, they either are not required, or do not, register with or disclose their activities with the FEC.**

## OVERVIEW OF FOLLOWING CHAPTERS

One of the striking differences between the 1996 elections and prior elections was the prominent role played by groups that never registered with the Federal Election Commission (FEC) as campaign organizations.[1] These groups included tax-exempt charities, social welfare organizations, labor unions and corporations. Some groups ran television ads attacking candidates, conducted direct mail and telephone bank operations targeting voters, distributed voter guides, increased voter turnout, advised campaigns, and attended weekly meetings discussing candidates and campaign strategy. These groups spent millions of dollars on activities designed to affect the outcome of federal elections in 1996, yet none disclosed their contributions or expenditures to the public or acknowledged that federal campaign laws applied to their operations.

The Committee hearings provided an invaluable opportunity to examine the role of these groups during the 1996 election cycle. The hearings could have examined, in a systematic way, whether national political parties used these groups to circumvent federal contribution limits and disclosure requirements; whether the persons directing the organizations deliberately evaded federal election law requirements or abused an organization's tax-exempt status; and whether the relevant federal election or tax laws require strengthening. Instead, the Majority failed to conduct a vigorous investigation, rejected Minority requests to hold hearings on specific groups, and left the legislative issues largely unexamined.

One key difficulty was the refusal of many groups to cooperate with the Committee's investigation.[2] Some simply asserted that they had never engaged in election-related activity and were outside the scope of the Committee's investigation. Others claimed that the First Amendment protected them from inquiry. The vast majority of subpoenaed groups refused, in whole or in part, to respond to Committee requests for interviews and documents. Faced with widespread resistance, the Majority lacked the political will to enforce the subpoenas issued, compel document production and deposition testimony, or hold public hearings and confront the groups. It settled instead for four days of hearings in which academics and public interest organizations discussed the problem generally and urged campaign finance reform.[3]

Despite the absence of a vigorous investigation and in-depth hearings, available evidence demonstrates that a number of independent groups engaged in partisan, election-related activities in 1996, that some of these groups coordinated their activities with a political party or candidates, and that additional investigation by the U.S. Departments of Justice and Treasury and the FEC is warranted. The evidence also demonstrates that legislation is needed, not to halt election-related activities by independent groups, but to bring their efforts within the existing legal requirements for contribution limits and disclosure.

**1996 Election-Related Activities**

During the 1996 election cycle, both parties benefited from the expenditures and activities of independent groups. The most visible example is televised ads. A study conducted by a nonpartisan organization, the Annenberg Public Policy Center, estimated that, during the 1996 election cycle, independent groups spent between $67 and $82 million on televised ads that split about evenly in their support of the two parties.[4] Almost 90 percent of these ads named specific candidates.[5] Groups like the AFL-CIO, Citizen Action, Citizens for Reform, and Citizens for the Republic Education Fund each spent millions of dollars on these televised ads.

While both parties benefited from the activities of independent groups, the evidence before the Committee indicates that the Republican National Committee ("RNC") organized and financed independent group activities to a much greater extent than did the Democratic National Committee ("DNC") during the 1996 election cycle. For example, FEC records indicate that, in 1996, the RNC gave nearly $6 million to tax-exempt organizations,[6] or 30 times more than the DNC which gave less than $185,000.[7] Documents produced by the parties indicate that, while both asked supporters to make contributions to sympathetic groups, the RNC explicitly planned to raise millions of dollars for certain pro-Republican groups and actually collected and delivered specific checks to them.[8] Documents produced to the Committee also indicate that the Republican Party worked to identify, on a national and regional level, the groups most likely to help Republican candidates win office;[9] instructed its candidates to develop formal "coalition plans" with sympathetic groups;[10] and distributed a "coalition building manual" to help them do so.[11] No comparable manual, memoranda or any other evidence before the Committee indicates this level of effort by the Democratic Party. The evidence before the Committee also suggests that the RNC undertook a wide variety of specific election-related activities with independent

groups, including joint issue advocacy efforts, joint polling and joint election strategy sessions; the evidence does not support a similar level of coordination between the DNC and independent groups sympathetic to Democratic candidates.[12]

The following chapters describe the parties' interactions with independent groups, the 1996 election-related activities of a few of the most active organizations, and a brief description of allegations involving other groups. Because the Committee did not hold hearings or enforce its document and deposition subpoenas, the available information is limited, and many unanswered questions remain. However, the types of campaign activities undertaken, the unmistakable signs of coordination with political parties and candidates, and the millions of dollars involved provide overwhelming evidence that independent groups were significant players in the 1996 election cycle.

On the Republican side, the following chapters chronicle how the RNC developed plans and worked with outside groups to affect the outcome of the 1996 elections; Americans for Tax Reform used $4.6 million in RNC soft dollars to conduct a direct mail and telephone bank operation in 150 Congressional districts countering anti-Republican ads on Medicare; Triad Management formed and directed two tax-exempt organizations to run over $3 million in televised ads attacking Democratic candidates; and the Christian Coalition spent at least $22 million and distributed 45 million voter guides before election day, manipulating the information in those guides to favor Republican candidates. On the Democratic side, the chapters examine the AFL-CIO's $35 million televised ad and get-out-the-vote efforts; Ickes' recommendation that Warren Meddoff contribute $1 million to specified pro-Democratic groups; the Teamsters' contribution-swapping schemes with other independent groups and attempt to involve the DNC; and contributions directed by Democratic officials to Vote Now '96.

Corporations, unions and other independent groups are legally permitted to participate in federal election activity if they comply with federal requirements for contribution limits and disclosure. The complaint with these groups in the 1996 election cycle is that they sought to affect election outcomes, while evading the contribution limits and disclosure requirements that apply to other entities engaged in campaign activities. It is this evasion of the law, and the resulting erosion of public confidence in the federal campaign finance system, that has made the election activities of independent groups such a serious concern.

## LEGAL ANALYSIS

Some of the activities engaged in by independent groups during the 1996 election cycle raise issues invoking both federal election law and federal tax law. While some of the campaign restrictions set out in these laws are clear, other provisions provide insufficient guidance on what conduct is lawful, while ambiguities in other provisions may hinder criminal prosecutions and civil enforcement actions in this area. As with the provisions banning foreign contributions, legislation is needed to strengthen and clarify the laws applicable to independent groups engaged in campaign activity.

**Categories of Independent Groups**

The groups examined include a variety of organizations whose common denominator is a claim of independence from any political party, candidate or campaign committee, and a refusal to report contributions or expenditures to the Federal Election Commission.

Two types of groups that raised considerable concern during the 1996 elections are charitable and social welfare organizations exempt from taxation under section 501(c) of the Internal Revenue Code.[13] Historically, these organizations have not engaged in significant election activity due to constraints in federal tax law.

Section 501(c)(3) exempts from taxation organizations organized and operated for "religious, charitable, scientific ... educational" and similar purposes. Unique among 501(c) tax exempts, donors to 501(c)(3) charitable organizations are allowed to deduct from their federal income tax a portion of their donations. The statute explicitly prohibits these charitable organizations from engaging in any campaign activity, stating that the exemption covers only an organization "which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."[14] In addition, the statute prohibits section 501(c)(3) charitable organizations from operating for the benefit of any private interest, including a political party.[15] Conferring such a private benefit violates the organization's tax exempt status and provides grounds for denying or terminating an exemption.[16] Examples of charitable organizations active during the 1996 election cycle are Vote '96 and the Americans for Tax Reform Foundation.

Social welfare organizations are exempt from taxation under section 501(c)(4) of the Internal Revenue Code. To qualify for this exemption, social welfare organizations must engage in activities that promote "the common good and general welfare of the people of the community."[17] The implementing regulation states, "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."[18] This regulation has been interpreted as prohibiting social welfare organizations from engaging in campaign activity as their primary pursuit, but allowing them to engage in it as a secondary pursuit.[19] Any campaign activity engaged in must be nonpartisan, so that the organization does not confer a private benefit on a particular political party.[20] In contrast to charitable organizations under section 501(c)(3), donations to 501(c)(4) organizations are not deductible by the donor. Examples of 501(c)(4) organizations active during the 1996 election cycle are Americans for Tax Reform and Citizen Action. Others, including the National Policy Forum and Christian Coalition, presented themselves as 501(c)(4) organizations, despite the fact that during the 1996 election cycle their applications were still pending before the IRS.

Two other types of independent groups are labor unions and corporations. Both are

prohibited under 2 USC 441b from making campaign contributions or expenditures except through a separately established political committee or segregated fund that registers with the FEC, complies with contribution limits, and discloses its contributions and expenditures.[21] Campaign restrictions on corporations have been part of federal law for 90 years, while restrictions on unions have been in place for more than 50 years.[22] The Supreme Court has repeatedly upheld their constitutionality.[23] Despite this history, the advent of the soft money and issue advocacy loopholes led to an explosion in corporate and union spending and activism during the 1996 election cycle.[24] Two examples in the 1996 election cycle are the AFL-CIO and Triad Management.

Each of these four types of groups -- charitable and social welfare organizations, unions and corporations -- has social and economic objectives apart from electioneering. They are not campaign organizations like the RNC, DNC, candidate committees, and corporate and union PACs, which register with the FEC under 2 USC 431(4) for the purpose of influencing federal elections and which file under section 527 of the federal tax code for groups organized and operated for the purpose of influencing elections.[25] But all four have become increasingly important players in federal elections.

**Disclosure**

RNC chairman Haley Barbour announced at a press conference on October 29, 1996, "Disclosure of contributions and expenditures, shining the bright light of public scrutiny, is the fundamental principle underlying our campaign finance laws."[26] During the 1996 election cycle, however, many independent groups never disclosed their election-related activities, contending primarily that they were engaged in issue advocacy efforts outside the jurisdiction of federal election laws. Efforts by the media to investigate televised ads attacking candidates on the eve of election day, sponsored by groups with unfamiliar names and no readily available spokesperson, were time-consuming and often unsuccessful.[27] Even after a year-long Senate investigation, due to the absence of FEC reports and the groups' defiance of Senate subpoenas, this Committee has limited information about their 1996 election activities.

The initial legal analysis is to determine, on a case-by-case basis, whether any of these groups violated federal election law disclosure requirements. The issues include whether a particular group qualified as a political committee under 2 USC 431(4) subject to the reporting obligations in 2 USC 434(a); or whether the group made "independent expenditures" expressly advocating the election or defeat of a clearly identified candidate subject to the reporting obligations in 2 USC 434(c). While straightforward in some respects, these federal disclosure requirements contain many ambiguities that render enforcement uncertain and difficult. These provisions would clearly benefit from legislation clarifying when groups must register as political committees and what expenditures qualify as independent expenditures, including better statutory tests to distinguish between candidate versus issue advocacy. Another possible approach is legislation which, rather than improving the tests for distinguishing candidate versus issue advocacy, would instead require greater disclosure of issue advocacy efforts that name candidates

or take place close in time to federal elections.[28]

**Coordination**

Another relevant legal inquiry concerns coordination, specifically whether any of the independent groups was coordinating its efforts during the 1996 election cycle with a political party, political committee or candidate. In Buckley v. Valeo, 424 U.S. 1, 47 (1976), the Supreme Court held that "expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate" are to be treated "as contributions subject to the limitations" on contributions in federal election law. The Court held that this approach was necessary to "prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions."[29] The Court explicitly upheld disclosure requirements directed to independent groups -- "individuals and groups that are not candidates or political committees" -- for expenditures on "communications that expressly advocate the election or defeat of a clearly identified candidate," and for coordinated political expenditures "authorized or requested by a candidate or his agent."[30]

Twenty years later, in Colorado Republican Federal Campaign Committee v. FEC, 116 S.Ct. 2309 (1996), the Supreme Court reaffirmed this approach. The Court stated that Buckley upheld the constitutionality of contribution limits "that apply both when an individual or political committee contributes money directly to a candidate and also when they indirectly contribute by making expenditures that they coordinate with the candidate."[31] The Court distinguished between "coordinated" and "independent" expenditures, holding that only coordinated expenditures are limited by the Federal Election Campaign Act ("FECA").[32] The Court also rejected the proposition that party expenditures should be treated, without exception, as having been coordinated with the party's candidates, holding instead that a party has a constitutional right to make independent expenditures and must be given an opportunity to demonstrate the absence of candidate coordination with respect to a particular party expenditure.

Section 441a(a)(7)(B)(i) of FECA states that, for purposes of applying the law's contribution limits, "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidates."

The significance for independent groups is twofold. First, if an independent group coordinates expenditures with a political party, campaign committee or candidate, its expenditures must be considered contributions subject to FECA's contribution limits and disclosure requirements. Second, if the independent group hides its coordinating activity, the group opens itself up to the charge that it is hiding contributions and deliberately circumventing federal contribution limits and disclosure requirements.

The issue of what actions constitute coordination is still largely unresolved. New regulations, ongoing litigation and FEC enforcement actions are tackling a variety of questions in

this area. For example, in March 1996, the FEC issued new regulations which state in part that a corporation or union distributing candidate voting guides to the general public "shall not contact or in any other way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates."[33] In Clifton v. FEC, 114 F.3d 1309 (1st Cir. 1997), the First Circuit struck down the part of the regulation that completely prohibited oral contact with a candidate as overly restrictive and without statutory authorization.[34] The court held that, while it "readily accept[s] that the government has an interest in unearthing disguised contributions,"[35] contacts such as simply asking a candidate for his or her position on an issue are not enough to establish coordination:

> [E]xpenditures directed by or 'coordinated' with the candidate could be treated as contributions; but 'coordination' in this context implie[s] some measure of collaboration beyond a mere inquiry as to the position taken by a candidate on an issue.[36]

The FEC is currently engaged in drafting regulations on coordination, but has yet to issue them.

A few FEC enforcement actions provide further guidance. In July 1996, for example, the FEC brought an enforcement action in federal court alleging that the Christian Coalition had coordinated expenditures during the 1990, 1992 and 1994 election cycles with federal House, Senate and Presidential candidates and their campaigns, thereby, inter alia, making illegal corporate contributions in violation of 2 USC 441b.[37] The complaint cited coordinated expenditures made by the Christian Coalition for voter identification and get-out-the vote efforts, the preparation and distribution of voter guides, and public communications expressly advocating the election or defeat of clearly identified candidates. To date, no court has ruled on the merits of this complaint. The FEC has also settled two enforcement actions against independent groups for coordinating their actions with candidates, obtaining conciliation agreements in which each group admitted violating FECA. One action was brought against Americans for Tax Reform ("ATR") in 1986 for coordinating with candidates on the timing and distribution of media advisories related to ATR's Taxpayer Pledge Program.[38] Another was brought ten years later, in 1996, against the Hyatt for Senate campaign committee and Hyatt Legal Services corporation for using a campaign media adviser to re-write television commercials broadcast by the corporation.[39] These two settlements were not tested in court.

A key legal issue now being litigated is the question of whether the Supreme Court holdings on coordination are limited to coordinated expenditures which expressly advocate the election or defeat of a candidate or whether they extend to expenditures for issue advocacy. On September 25, 1997, several federal election law experts testified before the Committee that, while the law is unsettled on this point, their view was that the Supreme Court holdings did extend to issue advocacy.[40] Lawrence Noble, the FEC's general counsel, testified that it is the FEC's position that issue advocacy paid for by an independent group and coordinated with a candidate may result in a contribution to the candidate, if the issue advocacy contains an "electioneering message."[41] He testified that an issue ad with no electioneering content would not

be affected by FECA, using the example of an ad broadcast by the Red Cross and coordinated with a candidate in which the candidate urges the public to join a blood drive.[42] He testified that, in the view of the FEC, coordinated issue ads which fall short of expressly advocating the election or defeat of a candidate, but which do convey an electioneering message benefiting the candidate, result in a contribution. He said that the FEC was currently involved in litigation to determine if this position is correct. A second witness, former FEC Chairman Trevor Potter, testified that "whether it is express advocacy, or issue advocacy, or anything else, it is relevant to ask in the case of a nonparty organization whether the spending ... was, in fact, directed and controlled by the candidate."[43] Both Noble and Potter testified that a different legal analysis would apply to coordination involving only a party and its candidate -- and not an independent group -- due to a longstanding legal presumption that coordination between a party and its candidates is permissible and appropriate.[44]

Given the lack of certainty, clarifying legislation on the types of actions that should be considered coordination and how coordinated issue advocacy should be treated would provide needed guidance and clear statutory authority to FEC enforcement efforts.[45]

Once coordination is established between an independent group and a political party, political committee or candidate, a coordinated expenditure becomes a contribution subject to the contribution limits in FECA. For example, if the expenditure were made by a corporation or union, the resulting contribution could be a violation of law -- FECA's ban on corporate and union contributions. Alternatively, if coordination were not established, the expenditure could nevertheless qualify as an "independent expenditure" under 2 USC 431(17) subject to disclosure under 2 USC 434(c).[46] Expenditures or contributions exceeding $1,000 during a calendar year could trigger requirements that a group register with the FEC as a political committee and comply with disclosure requirements in 2 USC 434(a).[47]

Coordination by an independent group with a political party, political committee or candidate is not, in and of itself, improper or illegal. But coordinated expenditures resulting in a contribution trigger requirements for the independent group to comply with relevant contribution limits and disclosure requirements. Coordinated expenditures without this compliance can constitute misconduct.

**Circumvention**

A third legal issue focuses on coordination undertaken by political parties, specifically, whether a political party or campaign coordinated with independent groups on issue advocacy spending during the 1996 elections. Political parties are required by the FEC to pay for their issue advocacy efforts with a mix of hard and soft dollars.[48] The FEC determined in 1995 that, in a presidential election year, a political party must pay 65 percent of the cost with hard dollars that meet FECA contribution limits and disclosure requirements. The FEC reasoned that issue ads sponsored by a political party are either administrative expenses or generic voter drive efforts designed to "urge the general public to register, vote or support candidates of a particular party or

associated with a particular issue,"[49] In the case of issue advocacy paid for by an independent group but coordinated with a political party, the questions that must be asked are, not only whether the independent group has violated federal contribution limits and disclosure requirements as discussed above, but also whether the political party deliberately circumvented federal hard money requirements by having the independent group serve as the nominal sponsor. For example, the chapter on Americans for Tax Reform describes a multi-million dollar issue advocacy effort on Medicare which was nominally sponsored by ATR, but coordinated with the RNC and paid for with an RNC soft money donation of $4.6 million. If the RNC had sponsored the Medicare effort directly, it would have had to use hard dollars for 65 percent of the cost; it instead financed the ATR-sponsored effort entirely with soft dollars.

**Third Party Contributions**

A fourth issue involving independent groups arose when the Committee received evidence indicating that both political parties suggested to supporters that they make contributions to sympathetic groups. Although pending campaign finance reform measures such as S. 25, the McCain-Feingold bill, would outlaw this practice, there is currently no statutory or regulatory provision that explicitly prohibits a political party from suggesting that a person make a contribution to an independent group, such as a charitable or social welfare organization. The suggestion alone, without more, does not establish a coordinated expenditure, unreported contribution, or circumvention of election law limits and disclosure requirements.

If, in addition to the fact that a contribution was recommended, evidence is found that the political party controlled the timing of the contribution or made the contribution contingent upon the recipient taking action at the suggestion of, or in concert with, the party or a candidate, it is possible that coordination occurred and compliance with contribution limits and disclosure requirements was required.

**Violations of Tax Law**

A fifth set of issues involves federal tax law. Charitable and social welfare organizations exempt from taxation engaged in a number of election-related activities during the 1996 election cycle. An initial legal analysis is whether any of these groups violated their tax-exempt status by engaging in partisan political activity and conferring benefits on a particular political party. For social welfare organizations under section 501(c)(4), an additional question is whether campaign activities were a dominant or secondary pursuit. A third question is whether any of these groups made false statements to the Internal Revenue Service in violation of 26 USC 7206, for example by indicating in an application for tax exempt status that the organization had not spent and did not plan to spend any money attempting to influence elections.[50] While the statutory restrictions on campaign activity are clear for charitable organizations under section 501(c)(3), social welfare organizations under section 501(c)(4) must rely on a number of regulatory interpretations that would benefit from legislation clarifying the campaign restrictions applicable to them.

Another concern that arose during the course of the Committee's investigation involves the problems associated with obtaining accurate information about an organization's tax exempt status. While section 6104 of the tax code makes available to the public successful applications under section 501(c) and related IRS materials, no similar public disclosure requirement applies to organizations whose applications are pending or ultimately rejected. The evidence before the Committee indicates, for example, that the National Policy Forum ("NPF") held itself out and operated as a 501(c)(4) social welfare organization for four years, from 1993 to 1997, while its application was pending before the IRS. The IRS decision letter ultimately rejecting the NPF application describes the standards used for granting 501(c)(4) status, as well as the results of an IRS investigation into NPF activities. This information is as important to the public as materials associated with successful 501(c) applicants, particularly since during the four-year period the NPF application was pending, NPF held itself out to the public as a 501(c)(4) tax-exempt organization as allowed by law. The same issues apply to the Christian Coalition, whose application for 501(c)(4) status has been pending for seven years. The public has a right to know during these long periods of time the basis for an organization's application, its status, and the IRS' evaluation of the applicant. To solve the problem, section 6104 could be amended to authorize the release of the same information for all 501(c) applications, rather than just for the successful ones. Alternatively, section 501(c) could be amended to prohibit organizations from holding themselves out as charities or social welfare organizations until their application for that status is actually approved by the IRS.

A related legislative concern involves indications by some organizations whose application for 501(c)(4) was rejected that they will instead claim tax exemption under section 527 of the tax code.[51] Section 527, as explained earlier, exempts from taxation groups organized and operated primarily for the purpose of influencing elections. The failed 501(c)(4) applicants apparently intend to argue that they operate to influence elections through the use of issue advocacy, rather than candidate advocacy. In this way, the groups apparently plan to avoid payment of taxes under section 527, while also avoiding the disclosure requirements in federal election law that otherwise subject campaign organizations to public scrutiny. Their aim, apparently, is to engage in election-related activities without paying taxes and without disclosing their activities to the IRS, FEC or public. This plan may succeed since, currently, section 527 grants a tax exemption without any required filing or public disclosure -- it does not have a requirement similar to section 501 that organizations file formal applications for the exemption or annual information returns; it does not require through section 6104 public disclosure of applications or annual returns (since none is filed); and it does not require organizations claiming the exemption to meet the disclosure requirements of the Federal Election Campaign Act. Corrective legislation could amend section 527 to limit the availability of the tax exemption to organizations that have registered with the FEC or the equivalent state body as a political committee. Legislation could also require organizations claiming the exemption to file applications and annual information returns under section 527 in the same manner now required under section 501. These filings would strengthen the ability of the IRS to detect tax avoidance and false statements.

1. On the first day of the Committee's hearings, Senator Glenn named misuse of independent organizations as a key concern that needed to be investigated. 7/8/97 Hrg. p. 20. Senator Torricelli stated that the "single greatest change in the political culture of the 1996 elections ... was the use of non-profit, tax-free organizations." 7/8/97 Hrg. p. 98.

2. See Chapter 40.

3. See hearings on September 23, 24, 25 and 26, 1997.

4. See Annenberg Public Policy Center, "Issue Advocacy Advertising During the 1996 Campaign: A Catalog," Report Series No. 16 (9/16/97), p. 7. The Center estimated that parties and independent groups together spent between $135 and $150 million on issue ads. Since the two parties together spent about $68 million on issue ads, that leaves the total for independent groups alone between $67 and $82 million. See also Washington Post, 2/9/97, which estimated total election-related spending by independent groups at $70 million.

5. Annenberg Public Policy Center, "Issue Advocacy Advertising During the 1996 Campaign: A Catalog," Report Series No. 16 (9/16/97), p. 7.

6. According to FEC records, in 1996, the RNC gave $4.6 million to Americans for Tax Reform; $650,000 to the National Right to Life Committee; and $600,000 to American Defense Institute which later returned the funds.

7. According to FEC records, in 1996, the DNC gave $117,500 to the National Coalition of Black Voter Participation; $20,000 to the African American Institute; $10,000 to the Stonewall Gay and Lesbian Club; $10,000 to the Congressional Black Caucus; and $4,000 to the Hispanic Caucus.

8. See, for example, undated document produced by the RNC entitled "Soft Money Fundraising Strategy," R003215, indicating that the RNC would raise "miscellaneous revenue" totaling $7.7 million for Americans for Tax Reform, National Right to Life Committee and American Defense Institute; Exhibit 2400: memorandum from RNC finance chair Jo-Anne Coe to RNC chairman Haley Barbour and other RNC officials, regarding the delivery of checks to these organizations; an undated document produced by the RNC, 10/17/96, R021609, analyzing whether contributions to five tax-exempt organizations are tax deductible and whether they would have to be reported to the public; an undated document, DFP004244, which lists four pro-Republican tax-exempt organizations and indicates for each organization a large dollar figure which, when added together, total $15.1 million. See also Chapter 10.

9. See for example, Exhibit 2365: memorandum from RNC director of campaign operations Curt Anderson to RNC chairman Haley Barbour, entitled "Group of 12, or Council of Trent, or Whatever," 3/4/96, R006050.

10. Exhibit 2363: memorandum from RNC director of campaign operations Curt Anderson to RNC chairman Haley Barbour, 4/23/96.

11. Exhibit 2367, Coalition Building Manual, authored by Curt Anderson.

12. See following chapters.

13. Subsection 501(c) authorizes an exemption from taxation for over two dozen types of organizations.

14. See 26 U.S.C. 501(c)(3) and 26 CFR 1.501(c)(3)-1; Association of the Bar of the City of New York v. Commissioner, 858 F.2d 876 (2d Cir. 1988), (even insubstantial political activity endangers an organization's exemption under section 501(c)(3)).

15. 26 USC 501(c)(3) and 26 CFR 1.501(c)(3)-1(d)(1)(ii)("it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests"); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989)(organization operated for the benefit of Republican organizations or candidates does not qualify for tax exemption under section 501(c)(3)).

16. American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989)(organization operated for the benefit of Republican organizations or candidates does not qualify for tax exemption under section 501(c)(3)); Regan v. Taxation with Representation, 461 U.S. 540 (1983)(tax exemption is a privilege than can carry severe restrictions).

17. 26 USC 501(c)(4); 29 CFR 1.501(c)(4)-1.

18. 26 CFR 1.501(c)(4)-1.

19. Rev. Rul 81-95, 1981-1 Cumulative Bulletin 332. The statute states that, to qualify for a tax exemption under 501(c)(4), an organization must be "operated **exclusively** for the promotion of social welfare" (emphasis added). The implementing regulation, 26 CFR 1.501(c)(4)-1(a), states that, "[a]n organization is operated exclusively for the promotion of social welfare if it is **primarily** engaged in promoting in some way the common good and general welfare of the people of the community" (emphasis added). It is this regulatory language that is cited as permitting 501(c)(4) organizations to engage in campaign activity as a secondary pursuit.

20. See IRS decision letter disqualifying National Policy Forum from tax exemption under section 501(c)(4) due to partisanship, 2/21/97; Chairman Thompson, 7/23/97 Hrg. p. 225 ("In a 501(c)(4), you are allowed some political activity. It is not supposed to be partisan political activity, but you are allowed some. But you are not supposed to be a subsidiary of a party."). See also endnotes 15 and 16, supra.

21. 2 USC 441b(a). Unions and business organizations such as a Chamber of Commerce may also be exempt from taxation under section 501(c)(5) or (6) of the Internal Revenue Code, but their exemption does not carry any prohibition against campaign activity. Unlike charitable and social welfare organizations, campaign restrictions on unions and corporations are contained in federal election law, not federal tax law.

22. See, for example, Tillman Act of 1907, prohibiting corporate campaign contributions. Campaign restrictions on unions date from 1943. Congressional Research Service Report No. 90-199A, "Campaign Financing & Corporate Expenditures: Analysis of Austin v. Michigan State Chamber of Commerce" (4/10/90).

23. See, for example, FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986); Austin v. Michigan State Chamber of Commerce, 494 U.S. 652 (1990).

24. See Part 4 on soft money and issue advocacy, infra.

25. 26 USC 527(e).

26. "Haley Barbour, Chairman of the Republican National Committee, Discusses Democratic National Committee Refusal of Pre-Election FEC Report," Presidential Campaign Press Materials, Federal Document Clearing House, Inc., 10/29/96.

27. See, for example, Arkansas Democrat-Gazette, 10/24/96; Kansas City Star, 10/27/96; Fresno Bee, 11/3/96; Wall Street Journal, 2/5/97; Washington Post, 3/9/97.

28. See S. 25, the McCain-Feingold bill, which proposes a number of legislative remedies to this problem; statement by Senator Carl Levin of Michigan, Congressional Record, 10/6/97, pp. S10409-16. See also Part 4 on issue advocacy, infra.

29. 424 U.S. at 46.

30. 424 U.S. at 80.

31. 116 S.Ct. at 2321.

32. See, for example, Parts II and III of the prevailing opinion. Some Justices suggested, in dicta, that parties should be able to make unlimited coordinated expenditures with their candidates, but no ruling was made by the Court on that issue. See, for example, opinion by Justice Kennedy.

33. 11 CFR 114.4(c)(5).

34. The court also struck down a requirement in the regulation that the voting guides provide substantially equal space and prominence to each candidate.

35. 114 F.3d at 1314.

36. 114 F.3d at 1311 (citations omitted).

37. FEC v. Christian Coalition, Civil Action No. 96-1781 (D.D.C.), 7/30/96.

38. FEC MUR 3975. See also chapter 11 discussing Americans for Tax Reform.

39. FEC MUR 3918.

40. See, for example, Buckley v. Valeo, 424 U.S. 1, 80 (1976), discussed above, in which the Supreme Court identified two separate categories of expenditures by independent groups which could constitutionally be subjected to disclosure requirements: express advocacy communications, and expenditures coordinated with candidates. By mentioning coordinated expenditures in a separate category, apart from express advocacy communications, the Court implied that coordinated expenditures which do not reach the threshold of express advocacy may qualify as candidate contributions subject to contribution limits and disclosure requirements.

41. Lawrence Noble, 9/25/97 Hrg., pp. 34-40.

42. Lawrence Noble, 9/25/97 Hrg., p. 38.

43. Trevor Potter, 9/25/97 Hrg., p. 36.

44. Lawrence Noble and Trevor Potter, 9/25/97 Hrg., pp. 35-36, 39-40. Potter testified that the FEC had traditionally "presumed all party spending was coordinated with candidates" and had deemed coordination between the two irrelevant, concentrating instead on determining whether specific party expenditures were generic party-building efforts that could not be attributed to individual candidates or candidate-specific spending subject to contribution limits. 9/25/97 Hrg., p. 22. See also legal analysis provided in Part 5, infra.

45. S. 25, the McCain-Feingold bill, proposes a number of legislative remedies to clarify what actions constitute coordination and result in contributions subject to FECA.

46. 2 USC 431(17) defines an "independent expenditure" as "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any unauthorized committee or agent of such candidate."

47. See 2 USC 431(4); Buckley v. Valeo, 424 U.S. 1, 79 (1976); Akins v. FEC, 101 F.3d 731 (D.C. Cir. 1996).

48. FEC Advisory Opinion 1995-25.

49. FEC Advisory Opinion 1995-25.

50. See, for example, item 15 on IRS Form 1024, "Application for Recognition of Exemption Under Section 501(a)."

51. See, for example, Roll Call, 10/20/97, p. 1.